THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12215 of 2006

DATED:02.11.2007

Between:

Andhra Vidyabhi Vardhini Sangham,
represented by it's Secretary and
Correspondent, Warangal,
Warangal District ….Petitioner

AND

Deputy Commissioner of Endowments,
Warangal Zone, Warangal and others ….Respondents

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WRIT PETITION No.12215 of 2006

ORDER:

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Andhra Vidyabhi Vardhini Sangham, represented by it's Secretary and Correspondent, Warangal, Warangal District filed the present writ petition praying for the issuance of a Writ of Mandamus declaring the action of the first respondent in passing the impugned eviction orders in Order No.37/2006 dated 18.03.2006 in O.A.No.150 of 1999 ignoring the vested rights of the petitioner over the land and buildings and also assuming powers under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter in short referred to as "Act" for the purpose of convenience) in respect of Inam lands as illegal, arbitrary, malafide and without the jurisdiction of the authority, set aside the same as illegal and pass such other suitable orders.

2. The first respondent is the Deputy Commissioner of Endowments, Warangal Zone, Warangal. The second respondent is the Assistant Commissioner of Endowments Department, Warangal. The third respondent is Sri Bhogeshwara Swamy Temple, Matwada Town, represented by Single Trustee.

3. The Secretary and Correspondent of the petitioner's Sangham had sworn to the affidavit filed in support of the writ petition. The final order made by the first respondent in O.A.No.150 of 1999 under Section 83 of the Act treating the petitioner as encroacher and

directing the petitioner to pay Rs.20,000/- per month from October, 1999 had been challenged in the present writ petition.

4. Sri K.V. Bhanu Prasad, the learned Counsel representing the writ petitioner had taken this Court through certain provisions of the Act and also the Rules framed thereunder. The learned counsel had also drawn the attention of this Court to Sections 9 and 11 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 and would maintain that in the light of the specific provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, the first respondent has no authority or jurisdiction to make the impugned order totally ignoring the vested rights and even otherwise the learned counsel would contend that the Revenue Divisional Officer alone would be competent to decide this question not only in the light of the provisions of Sections 9 and 11 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, but also in the light of Section 77 of the Act. The learned Counsel while making elaborate submissions had taken this Court through the historical background of the litigation and also made elaborate submissions in relation to the vested rights of the writ petitioner, which are to be recognized by the competent authority under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. The learned Counsel also pointed out to the relevant portions of the prior orders and would maintain that the first respondent had totally ignored the prior orders in making the present impugned order. The learned counsel also placed reliance on certain decisions to substantiate his submissions.

5. The learned Government Pleader for Endowments had taken this Court through Sections 83, 84, 87, 89 and also 14 of the Act and would maintain that in the facts and circumstances, the first respondent alone would be competent to make the impugned order. Incidentally,

the learned Government Pleader for Endowments had also drawn the attention of this Court to Sections 4 and 9 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. While elaborating his submission, the learned Government Pleader for Endowments would contend that the Archaka rights, if any, had been abolished by the Act and hence, would contend that by virtue of the transactions said to have been entered into, the petitioner would be entitled to certain legal rights, cannot be sustainable. The learned Government Pleader for Endowments also would contend that when the original inamdhar himself had no ownership and when the Archaka himself had no right at all to execute any document and especially in the light of the fact that the heirs had entered into a compromise, it would be futile on the part of the writ petitioner to contend that the first respondent is not competent to decide the said question. Further, while elaborating his submissions, the learned Government Pleader for Endowments also would maintain that at no point of time this lease relating to the endowment land had been approved by the competent authority and hence, the same is invalid and the status of the petitioner to be taken as that of an encroacher only. Further, the learned Government Pleader for Endowments also pointed out the alternative remedies available to the writ petitioner and would maintain that even on this ground the petitioner is bound to fail and the writ petition is liable to be dismissed.

6. Sri N. Guru Gopal, the learned Counsel representing the third respondent-institution had taken this Court through the relevant provisions of the Act and the Rules framed thereunder and also the nizams Regulations of 1355 fasli and further had drawn the attention of this Court to Sections 84 and 92 of the Act apart from Section 14 of the Act and would maintain that in the light of the different provisions of the Act, the contention advanced by the writ petitioner that the first

respondent has no jurisdiction or authority to make the impugned order, cannot be sustained. The learned Counsel also placed reliance on certain decisions.

7. Heard the learned Counsel and perused the records.

8. It is averred in para 3 of the affidavit filed in support of the petition that the petitioner already had filed an application before the Inams Tribunal to recognize their vested rights under Section 9 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 and the Revenue Divisional Officer had granted stay on 07.12.2002 directing the first respondent not to proceed with the enquiry initiated by him in O.A.No.150 of 1999. It is also stated that however the first respondent ignoring the orders made by the Revenue Divisional Officer, who is the competent authority to deal with the matter to recognize the vested rights of the petitioner, passed an interim order in I.A.No.72 of 2000, dated 16.01.2003 directing the petitioner to pay a sum of Rs.20,000/- per month from 01.01.1997. It is stated that aggrieved by the said decision, the petitioner filed Writ Petition No. 6975 of 2003 questioning the order of the first respondent and this Court while admitting the writ petition passed an interim order directing the petitioner to pay a sum of Rs.5,000/- only pending the writ petition and ultimately, this Court allowed the writ petition on 22.06.2004 with the following directions:-

> "It is stated that the petitioner made a claim under Section 9 of the Act to grant Occupancy Certificate in its favour where every private building, situated within an Inam shall, with effect from the date of vesting, vest in the person who owned it immediately before the said date. Admittedly, 1st proviso to Section 4 of the Act do not prohibit granting of Occupancy Certificate over the building covered under Section 9 of the Act.
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> In view of the same, Deputy

> Commissioner of Endowments, Warangal-1st respondent is hereby directed to pass final orders in O.A.No.150 of 1999 keeping in view of the above provisions. Pending passing final orders in O.A. the interim order granted by this Court that petitioner shall deposit an amount of Rs.5,000/- per month and on such deposit the 3rd respondent shall be entitled to withdraw the same without furnishing security shall continue."

It is also stated that though the first respondent was specifically directed to keep in mind the provisions of Section 9 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, the first respondent conveniently omitted to pay any attention relating to the same. It is stated that the petitioner-institution obtained registered lease deed in the year 1945 for a period of 99 years in Survey No. 6 for an extent of Ac.2.30 guntas from one Nagavarapu Bikshapathi and immediately after obtaining lease, the petitioner-institution constructed a school building with the permission of the then Warangal Municipality on 18.02.1955. Even before that the petitioner-institution was being running the school was in thatched sheds. Section 9 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 dealing vesting of certain buildings and inam lands used for non-agricultural purpose reads as hereunder:-

> (1) Every private building, situated within an inam shall, within effect from the date of vesting, vest in the person who owned it immediately before that date.
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> (2) Where an inam land has been converted for any purpose, unconnected with agriculture, the holder of such land shall be entitled to keep the land, provided that such conversion was not void or illegal under any law in force,
>
> (3) The vesting of private buildings or

lands under sub-section (1) or (2) shall be subject to the payment of non-agricultural assessment that may be imposed by Government from time to time.

9. Section 11 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 dealing with saving of rights in certain cases reads as hereunder:-

(1) Where before the date of vesting, an inamdar has created, either by way of lease or otherwise, any right in any inam land which vests in the State other than the lands specified in clauses (a) and (c) of sub-section (1) of Section 4, including rights in any forest, mines or minerals, quarries, fisheries, or ferries the transaction shall be deemed to be valid and all rights and obligations arising thereunder, on or after the date of vesting, shall, be enforceable by or against the Government.

Provided that the transaction was not void or illegal under any law in force:

Provided further that where such right was created in any lands, other than the lands specified in clauses (a) to (c) of sub-section (1) of Section 4 the government may, if in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

(2) The person whose right has been terminated by the Government under foregoing proviso shall be entitled to compensation from the Government equal to the estimated net income which would have accrued to such person from the land, for the unexpired portion of the period for which the right was created, having regard to all the circumstances of the case.

10. Section 4 of the Andhra Pradesh (Telangana Area) Abolition

of Inams Act, 1955 dealing with Registration of inamdars as occupants reads as hereunder:-

(1) Every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than-

(a) lands set apart for the village community, grazing lands, mines and quarries, tanks, tank beds and irrigation works, streams and rivers;

(b) lands in respect of which any person is entitled to be registered under Section 5, 6, 7 and 8 of the Act;

(c) Lands upon which have been erected buildings owned by any person other than the inamdar;

Which immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally are equal to four and half times the 'family holding'

Provided that where imams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under Section 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the conditions of personal cultivation;

Provided further that where any person other than the concerned charitable or religious institution has been registered as an occupant under Section 5, 6, 7 and 8 after the commencement of the Andhra Pradesh (Telanga Area) Abolition of Inams (Amendment) Act, 1985 such registration shall and shall be deemed always to have been null and void and no effect shall be given to such registration?

(2) No Inamdar shall be registered as an occupant of any land under sub-section (I) unless he pays to the Government as premium an amount equal to twenty five times the difference between the jodi or quitrent, if any, paid by him and the land revenue payable in respect of such land. The amount of premium shall be payable in not more than ten annual installments along with the annual land revenue and in default of such payment, shall be recoverable as arrears of land revenue due on the land in respect of which it is payable.

(3) The inamdar shall be entitled to compensation from the Government as provided for, under this Act in respect of inam lands in his possession in excess of the time limit specified in sub-Section (1) whether cultivated or not.

*[(4) Omitted

Objects and reasons for omitting the Sub-Section 4

Sub-Section (4) of the Section 4 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. Provides that, if the lands for the purpose of registration of inamdar as occupant are required to be resumed to make up the deficiency to the extent of 3 family holdings, the same shall be resumed under the provision of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 in the order provided thereunder.

The rights of an inamdar to resume land to make up deficiency to the extent of 3 family holdings under the above said provision works out to be disadvantage of permanent tenants, protected tenants and non-protected tenants in the case of inam lands. The Government have therefore decided to suitably amend the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955.

11. It is stated that under Section 9 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 since the petitioner-institution had constructed a school building even before the commencement of the Act with the prior permission of the then Municipality of Warangal, the petitioner-institution had acquired vested

rights long ago. Even though, there was an amendment of the Act in the year 1994 and it was amended as hereunder:-

> "Provided that where Inams are held by or for the benefit of charitable and religious institutions, no person shall be entitled to be registered as an occupant under Section 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the condition of personal cultivation."

12. It is also stated that even after the Amendment, the vested rights of the petitioner have been recognized and the Endowments Department cannot claim any right over the property and cannot treat the petitioner as encroacher of an endowments land. Even if amounts had been paid to the endowments department in ignoring such vested rights, such rights of the petitioner conferred by operation of law cannot be said to have been lost. Further, it is stated that the first respondent while discussing the provisions of Section 4 and the proviso thereunder, conveniently did not deal with the exceptions contained therein. Further, the 1st respondent went on saying since the lease is not approved by the Commissioner of Endowments, the lease is not valid and therefore, they have no right to continue in the premises. It is further stated that the stand taken by the 1st respondent is that when the Archaka was given land for their services as Inam, they cannot have the right to lease out the lands. Further, the 1st respondent took a stand that, as the petitioner did not apply for any occupancy certificate, the District Collector, Warangal never granted any occupancy right to the petitioner and therefore, the petitioner is not entitled to the relief. It is submitted that, when by operation of Law, petitioner-institution had

acquired the vested rights over the property, there is no question of making an application for grant of occupancy rights. Further, it is stated that he had acquired right automatically by virtue of operation of Law and Law doesn't envisage making any such application for a case of this nature. It is stated that all the other stands taken by the 1st respondent in his impugned order with regard to Service Inam, Burdened with Archakatvam Service and the Rights of the Inamdar are purely in ignorance of the Law of Abolition of Inams Act. Once the inam is given recognizing the services of the Archaka, it becomes his absolute property and he can deal with the property as he likes. Therefore, Nagavaram Bikshapati who is admittedly the inamdar has got every right to deal with the property and therefore, the lease deed entered into with the said Bikshapati is valid. It is further stated that the first respondent has no right or authority to resume the Inam lands under Section 77 of Endowments Act. It is the R.D.O. that is empowered to resume the Inam land. It is stated that the proceedings before the R.D.O. initiated by the petitioner are still pending because of the non-cooperation of the 1st respondent. It is also stated that they filed counter only on 12.05.2006 without referring to the relevant provisions of Law. Therefore, the order of the 1st respondent is illegal and is liable to be set aside. Further it is stated that now, there is a threat of dispossession and recovery of the amount falsely fixed by the 1st respondent. Unless the impugned order is stayed, petitioner-institution will be put to serious and irreparable loss. In such circumstances, the petitioner approached this Court praying for the reliefs specified above.

13. In the counter-affidavit filed by respondents No.1 and 2 which was sworn by respondent No.2-Assistant Commissioner of Endowments Department, Warangal it is stated that the writ petition

itself is not maintainable in view of the fact that the petitioner ought to have approached the statutory authority provided under Act 30/87 by filing the appeal under Section 92 of the Act, instead he had approached this Court taking untenable grounds. It is also stated that under the provisions of the Act 30/87, since the property belongs to third respondent-temple the provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, is not applicable to the subject property. Further it is stated that in terms of G.O.Ms.No.866 dated 08.08.2003, all leases and licenses pertaining to immovable properties other than Agricultural Lands of the Endowments Institutions are to be given as per the rules made therein and in view of the provisions of the Act 30/87, all leases granted with respect to the Endowments properties stood cancelled. As per Section 82 of the Act with respect of the agricultural property and for other immovable property, the same are governed by the Rules made under Section 82 i.e., G.O.Ms.No.866 dated 08.08.2003. Further, specific stand has been taken that under Section 144 of the Act, the hereditary rights are abolished. Therefore, by operation of law, the subject property which was admittedly, a service inam given to the Archaka automatically vested in the third respondent temple-institution. Section 144 of the Act dealing with abolition of shares in Hundi and other rusums reads as hereunder:-

> "Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or in any scheme, custom, usage or agreement, or in any manual prepared by any institution or in any Farmana or Sanad or any deed or order of the Government to the contrary governing any charitable or religious institution or endowment, all shares which are payable or being paid or given or allowed at the commencement of this Act to any Trustee, Dharmakartha, Mutawalli, any office holder or servant including an Archaka or Mirasidar and share or shares, in the Kanukas offered either

> in kind or in cash or both by the devotees either in Hundi, Plate or otherwise, or any resums in the Archana or Seva tickets and tickets for tonsuring or any resums collected from the person for the performance of marriage or Upanayanam and the like, all offerings made in the premises of the Temple or at such places as may be specified by the Trustee, all Prasadams and Panyarams offered either by the Temple or devotee, and such other kinds of offerings, all shares in the lands of the institution or endowment allotted or allowed to be in possession and enjoyment of any archaka, office holder or servant towards remuneration or otherwise for rendering service and for defraying the "Paditharam' and other expenses connected with the service or management of the temple, shall stand abolished with effect on and from the commencement of this Act.

Further it is stated that under the provisions of the Act, the first respondent is the competent authority to entertain O.A.No.150 of 1999 and passed the impugned order dated 18.03.2006. It is further stated that the petitioner claims to be lessee of the land which lease was executed by Archaka and Hereditary Trustee Late Sri N. Bikshapathi. When once the Archaka himself ceases to have any right over the property under provisions of the Act 30/87, the petitioner cannot have a better right. Therefore, the contention of the petitioner that under Section 9 of the A.P. (Telangana Area), Abolition of Inams Act, 1955, they have vested rights is untenable. It is further stated that the said deceased Archaka/Trustee obtained an occupancy rights certificate from the R.D.O. Warangal with respect land in Sy.No.421 an extent of Act.1.33 guntas wet land and Sy.No.6 an extent of Ac.2.30 guntas dry which Kidmath/Service Inam land is situated at Mattwada, Warangal in 1989, that too after commencement of the Act, 30/87. The Asst.

Commissioner, Endowment, Warangal addressed a letter dt.27.04.89 to the Collector, Warangal informing about the order of the R.D.O. dt.03.02.1989 and sought for its cancellation. The Collector suspended the orders of the R.D.O., on 31.07.1989. The Archaka carried the matter in appeal. Subsequently, the said Archaka/Trustee sold an extent 5,239 square yards to various people in Sy.No.421 of Mattwada, Warangal. Further it is stated that the said Archaka/Trustee died on 07.09.1990. The legal heirs of the deceased Archaka approached the Assistant Commissioner, Warangal for a compromise. A report was submitted by the Assistant Commissioner, Warangal to the Commissioner, Endowments Department, Hyderabad. After taking into consideration the litigation pertaining to the land and taking into consideration the report of the Assistant Commissioner, Warangal dated 05.05.1992, the Commissioner, Endowments Department in his proceeding Rc.No.D1/43701/89, dt.26.03.1993 approved the compromise proposals in the following terms:-

> "In view of the position and better interest of the temple permission is hereby accorded to the Executive Officer of the temple to enter into compromise with the legal representatives of Late N. Bikshapathi/Trustee/PoojariSriBhogeshwara Swamy Temple, Warangal Town and District, if they agree to the following conditions:-
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> 1. That the L.Rs should deposit the entire sale consideration received by Late N. Bikshapathi/ Trustee/Poojari in the name of the temple @ Rs.40/- per sq.yard in respect of 5,239 sq.yards.
> 2. That the L.Rs shall surrender the remaining land out of Sy.No.421 and 6 in favour of the deity and the Assistant Commissioner is requested to ensure that the

> compromise with the above conditions is affected and report compliance early. The entire amount received by way of the compromise shall be deposited in the schedule bank as per rules and compliance be reported."

Further, it is stated that the legal representatives of the Archaka had complied with the above conditions and surrendered the land in Sy.No.421 and Sy.No.6. Further it is stated that the subject land pertaining to this writ petition is situated in Sy.No.6 comprising an extent of Ac.2.30 guntas. The petitioners Sangham has established its institution on the land belonging to the 3rd respondent. It is submitted that when once the said land admittedly belongs to 3rd respondent institution and the alleged occupancy rights in favour of Late Sri Bikshapathi, the hereditary/Archaka/Trustee were surrendered by legal heirs of the said Bikshapathi, the question of petitioner's acquiring rights under provisions under Section 9 of the Abolition of Inams Act, 1955 does not arise. Further it is stated that, therefore, the order of the first respondent declaring the petitioner as encroacher and directing to pay Rs.20,000/- per month from October, 1989 till the date of removal of encroachment is valid and perfect in law. Specific stand had been taken that the petitioner cannot claim any absolute rights over the property of the third respondent and since the petitioner is in unauthorized occupation of the property, the impugned order made by the first respondent is just and proper.

14. In the counter-affidavit filed by the third respondent virtually self same stand taken by respondents 1 and 2 had been repeated. Sections 14, 34, 82, 83, 84, 92, 144 of the Act had been referred to.

15. Section 14 of the Act dealing with vesting of all properties in

the institution or endowment reads as hereunder:-

> All properties belonging to, or given or endowed to a charitable or religious institution or endowment shall, vest in the charitable or religious institution or endowment, as the case may be.

16. Section 34 of the Act dealing with abolition of hereditary rights in Mirasidars, Archakas and other office holders and servants reads as hereunder:-

(1) (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether, hereditary, contractual or otherwise of a person holding any office of the Pedda Jeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.

(b) Any usage or practice relating to the succession to any office or service or post mentioned in Clause (a) shall be void.

(c) All rights and emoluments of any nature in cash or kind or both accrued to and appertaining to any office or service or post mentioned in Clauses (a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in Clause (a) of sub-section (1) holding office as such on the

> date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of Section 35.

17. Specific stand had been taken that the writ petition is liable to be dismissed on the ground of availability of alternative statutory remedy provided under the Act either under Section 84 or Section 92 of the Act.

18. Further, it is stated that the property in issue is a charitable Endowments by virtue of sub section (3) of Section 2 of the Act. As per the second explanation to sub-section (2), even if service holder gets rytwori patta, as per Section 14 of the Endowments Act, once the property is dedicated to the temple, the same will be vested with the temple only. The property of the temple cannot be alienated or sold without following the Act and the rules made thereunder. Even the leases or non-agricultural lands will be governed by the rules made under the Act. The rules made under Section 82 in G.O.Ms.No.866 made clear that all the leases, which are granted for other than agricultural purpose stands cancelled even if their occupancy of the lease is in force. It is further stated that admittedly, the land in issue was used for non-agricultural purpose only. Hence, by operation of law, the leases even if they have any force of time, comes to an end by 08.08.2003 i.e., by the date of promolgamation of G.O.Ms.No.866. Further it is stated that the hereditary rights of Archaktwam was abolished by virtue of Section 34 of the Endowments Act. Section 144 prohibits the archakas from keeping the land of the temple in lieu of remuneration. It is further submitted that the case of the petitioner is that, he came in possession of the land in issue as a lessee of Archaka

for a period of 99 years. It is further stated that the case of the petitioner is that, by the time of execution of the lease, the age of the archaka is 9 years. The petitioner has not denied the fact that the land in question is in possession of Archaka though the title is vested in the temple. The petitioner has not disputed the fact that the land in possession of Archaka is burdened with service. The relevant time of alleged entering the lease, the Nizam Endowments Regulations in force and as per those regulations and rules made thereunder, no lease can be given for more than one year and it cannot be renewed without permission of the authorities. Further it is stated that the leases have to be given by way of public auction only. But all these conditions were violated by both the guardian of the Archaka and the petitioner herein. Hence, the lease agreement is void one. It is stated that the possession of Archaka over the disputed land is burdened with service only, it is not his absolute right, hence he does not have any right over the land for grant of lease for 99 years. In any event, the alleged lease which was said to have been entered into by the petitioner and the deceased archaka does not bind on the temple, who is true owner. In any event, the Archaka who was in possession conditionally cannot cross the condition. Specific stand had been taken that the first respondent is the competent authority to deal with the question in controversy. Further it is stated that even if it is the D.R.O., Warangal granted occupancy rights in favour of Sri Nagavaram Bikshapathi, the then Hereditary Trustee/Archaka of respondent No.3-temple, the same may not be of any serious consequence in the light of the compromise order made in Rc.No.D1/43701/1989, dated 26.03.1993, which was implemented in toto as a result of which the then hereditary trustee respondent No.3-temple, Late Sri Nagavaram Bikshapathi ceased his rights on the said land in Sy.No.6 Acs.2.30 guntas situated in Mattwada (V) Warangal City and the relevant portion is as hereunder:-

“In view of the above position and better

interest of temple, permission is hereby accorded to the Executive Officer of the temple to enter into compromise with the legal representatives of Late N. Bikshapathi, Trustee/Poojari Sri Bhogeshwara Swamy Temple, Warangal Town and District, if they agree to the following conditions.

1. That the L.Rs should deposit the entire sale consideration received by Late N. Bikshapathy, Trustee/Poojari in the name of the temple @ Rs.40/- per Sq.Yard in respect of 5.239 Sq.yards.

2. That the L.Rs shall surrender the remaining land out of Sy.No.421 and 6 in favour of the deity and

3. That the L.Rs shall withdraw the all matters pending in various courts including High Court of A.P.,

The Assistant Commissioner is requested to ensure that the compromise with the above conditions is affected and report compliance early. The entire amount received by way of the compromise shall be deposited it in the schedule bank as per rules and compliance reported."

It is also stated that thus the hereditary trustee of respondent No.3 temple had not only deposited the sale proceeds realized by him provisionally to the tune of Rs.2,09,560/- for 5,239 square yards in Sy.No.421 situated in Matwada, Warangal Town being the Service Inam/Kidmati Inam land of respondent No.3 temple, besides surrendering the excess land Acs.2-30 Gts in Sy.No.6 of Matwada situated in Warangal. Obliviously, the land in which the A.V.V. Sangham has established its educational institutions is a part of the

said Sy.No.6, Matwada. It is further stated that when once the then hereditary of respondent No.3 temple, has surrendered the land in favour of respondent 3 temple, the question of his enjoying perfect right or title over the scheduled land concerned would come to an end in toto. Thus, the institution, third respondent became the owner of the property. It is further stated that the Act was enacted to safe guard the properties of the Charitable and Hindu Religious Institutions of the State of Andhra Pradesh. Specific stand had been taken that the tenant continues to be a tenant always in the eye of law and certain details relating to writ petition No.12215 of 2006 had been referred to. It is stated that the contention of the petitioner is denied in relation to the averments made in para 4. Since by virtue of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 the properties belong to the institution reverted back to the institutions, unless they are purely imams. It is further stated that the averments of the para, in which facts are mentioned are partly committed as far as 99 years lease concerned. But it is also the duty of the petitioner of this writ petition to obtain the Endowments Department permission, while constructing pucca buildings, therein, since the land is an institutional land, which is supervised by the Department. Further it is stated that the Endowments Department is very much existing since 1923 itself. If the intention of the petitioner is fair, they should have come forward to enhance the rents from time to time reasonably. Further it is stated that the Hyderabad Endowments Regulations does not empower the lessees to continue on the land for more than one year and all the claims from (1) to (3) are not binding on the respondent 3-institution as per Law in force. (2) It may be true that they obtained Municipal permission, but there was no permission or approval of the Endowments authority either the Assistant Commissioner, or Endowments Department, or Commissioner, Endowments Department, A.P., Hyderabad as the case may be, which is quite

essential. In other words to assert their possession of enjoyment over the schedule property, the petitioner has been making pucca constructions ignoring the interests of the Religious Institution in a prime area which is located in the heart of Warangal City, whose value runs to crores of rupees to day. Further it is stated that simply by paying a nominal rent their intention is to enjoy lot of Endowments property is clearly seen in the instant case. (3) the vested right of the petitioner on the Endowments property is totally denied for the grounds mentioned in para supra. (4) The averments made therein are quite true of correct and good at law, and hence, the petitioner has no title over the scheduled lands, ignoring of challenging the authority of the respondent 3 or Endowments Department authorities. It is further stated that the said land in Sy.No.6 is a land surrendered to the temple authorities so the question of enjoying rights by the then Hereditary Trustee does not arise. Further it is stated that it is utterly false to say that Sri N. Bikshapathi entered into lease agreement in 1945 on which date he was a minor of 9 years old. The said minor mother had no authority to lease without obtaining the prior permission of the competent authority as per Hyderabad Endowments Regulations 1923 and the rules made thereunder.

19. Further, it is stated that the writ petitioner in the first incidence should have approached the proper appellate authority under the Endowments Act 30/1987, to challenge the order No. 37/2006 Dt.18.03.2006 passed in O.A.No.150/1999 by respondent 1, instead of approaching the Hon'ble High Court straight away. Thus, he has erred to take a wrong legal step to seek a remedy.

20. Strong reliance had been placed on **South Central Railway v. Mutha Navin Krishna**[1] to convince this Court that in view of the fact that alternative remedy is available, the writ petition is liable to be

dismissed on that ground.

21. In **Peddinti Venkata Murali Ranganatha Desika Iyengar and others vs. Government of Andrha Pradesh and another**[2], the Apex Court while dealing with Section 76 of the Act and Section 7 of the Andrha Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956) observed as under:-

> "It would thus be clear and we hold that without amending the law under Inam Abolition Act and without properly removing the foundation of the judgments rendered by the High Court, the legislature sought to destroy the effect of the law in Inam Abolition Act on erroneous belief or assumption that it did not bind the religion or charitable institutions or endowment or that the holder of land did not acquire title or no patta was granted to him and the land was still with the institution and treated the occupant as encroacher. The legislation founded on such an erroneous assumption does not have the effect of depriving the holder of the land or their vested rights acquired under the Inams Abolition Act. The legislature has plainly misfired. Accordingly, we hold that Section 76 and Explanation II to Section 2 (22) of the Act to that extent are invalid and unconstitutional."

22. In the light of the respective stands taken by the parties, the question to be decided is whether the first respondent has competency to make an order of eviction treating the petitioner as encroacher in the light of the Sections 4, 9 and 11 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. Several of the facts are not in controversy. The origin of the right also is not in serious controversy. Whether those rights, if any out of the lease transaction, had

crystallized themselves into the alleged vested rights claimed by the petitioner by virtue of Section 9 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 or whether in the light of the different provisions of the Act especially in the light of the modifications which had been entered into with the legal representatives of the original hereditary trustee these alleged vested rights be continued to be agitated or to be decided by the competent authority under the provisions of the Andhra Pradesh (Talangana Area) Abolition of Inams Act, 1955. The relevant regulations governing the filed at the relevant point of time also had been placed before this Court. The original hereditary rights, if any, had been totally abolished by the present Act. It is no doubt true that this transaction was entered into long prior coming into force of the present Act. It is suffice to state that at no point of time, the said lease transaction has been approved by any competent authority under the provisions of the Act, the different legislations governing at the relevant point of time. In the light of the nature of the grounds when the rights had been totally abolished by the present legislation to contend that the character of the land stands unchanged so as to attract the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 only, in the considered opinion of this Court, cannot be a sustainable stand, especially, keeping in view the different provisions of the present Act and the object with which such provisions had been introduced. The relevant provisions of the said Act Sections 14, 34, 82, 83, 84, 92, 144 and the like may be referred to in this context and the broad scheme of the Act being well known these provisions need not be elaborately discussed.

23. Hence, in the light of the said provisions, this Court is of the considered opinion that it cannot be said that the first respondent has no jurisdiction or authority to make the impugned order of eviction since the property in question is the endowments property and hence, it cannot be said that the jurisdiction of the first respondent is totally

excluded by virtue of the operation of Section 9 of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 especially in the light of Section 4 of the said Act. Hence, this Court is of the considered opinion that the impugned order does not suffer from the jurisdictional error as pointed out by the petitioner. It is needless to say that the writ petitioner is having an effective alternative remedy, but however, on the ground of inherent lack of jurisdiction on the part of the first respondent, the impugned order had been challenged by filing the present writ petition. The other proceedings, if any, before the revenue authorities may not seriously alter the situation since the nature of the land being a land belonging to the endowments or the religious institutions, the first respondent is competent to make the impugned order. Suffice to state that the writ petition being devoid of merits and the same is liable to be dismissed.

24. Accordingly, the writ petition is hereby dismissed. In the light of the peculiar facts and circumstances, the parties to bear their own costs.

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P.S.NARAYANA, J.

DATED:2nd November, 2007
Note: L.R. Copy to be marked
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[1] 2007 (1) ALT Page 700)

[2] AIR 1996 SCW 408